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On the Mode of Procedure under the New Lunacy Law of the State of New York,

With Suggestions of Methods under which its Provisions can most easily be carried into Effect, and also of Improvements in the Law Itself.

BY

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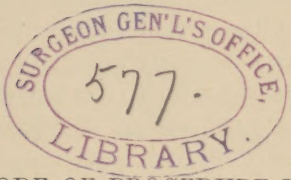

ON THE MODE OF PROCEDURE UNDER THE NEW LUNACY LAW OF THE STATE OF NEW YORK,

WITH SUGGESTIONS OF METHODS UNDER WHICH ITS PROVISIONS CAN MOST EASILY BE CARRIED INTO EFFECT, AND ALSO OF IMPROVEMENTS IN THE LAW ITSELF.*

By RALPH LYMAN PARSONS, A. M., M. D.

The paper recently read by Dr. Jacoby before the Neurological Society, and the discussion which followed, elicited the fact that many physicians consider the new lunacy law of the State of New York as unreasonably obstructive in its character; so much so, indeed, that some of the eminent physicians who joined in the discussion expressed the intention of hereafter refraining from placing their insane patients under legal care within the State.

If this view of the character of the law is well founded the interests of the unfortunate insane are so jeopardized thereby that the most strenuous efforts are demanded to secure its annulment or its modification.

It is a well-established fact that, as in many other diseases, so in insanity, the issue of life or death, of recovery or of lifelong mental impairment, often depends upon the promptitude with which the sufferer is placed

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under the most favorable conditions and under the most efficient care and treatment. And it is also a well-established fact that the promptitude with which efficient remedial measures are likely to be taken depends greatly upon the facilities which are afforded for the securing of such treatment, and on the absence of unnecessary formalities and obstructions.

Unfortunately, most persons who are afflicted with mental diseases, even in the milder forms, can be treated more efficiently and with better prospect of recovery when quite separated from their relatives and from their customary surroundings than in their own homes, however favorably situated their homes may be. But very naturally the relatives and friends of such persons are usually slow in realizing the truth and in consenting to place the invalid in the care of strangers; and the delay in taking the necessary steps is naturally increased with every additional formality and obstruction that may be placed in the way. The best condition of things, in the interest of these patients, would be the removal of all legal formalities whatever, allowing them to be placed under proper care and treatment precisely as a person ill with pneumonia or of a fever may now be placed in hospital care. But there are two special reasons which render this amount of freedom unadvisable. The first is in the interest of the mental invalid who may not understand that he is ill, or who may not be willing to submit to the needed care and treatment. In such case the will of another must needs be substituted for his own, and this requires the authorization of the law. The second reason why such freedom in placing uncertified mental invalids under compulsory care is unadvisable and even inadmissible is in

the interest of that great body of our citizens who are not insane; lest, possibly, some of these persons should be kidnapped and placed under restraint as a lunatic.

And it must be admitted that upon rare occasions some person who may be considered as technically sane does conduct himself in such a manner as to lead to the mistake of adjudging him a lunatic. It must also be admitted that, while these mistakes are very rare, and while the circumstances are such that serious harm is seldom if ever done, something must be conceded to the fears of a few oversensitive but influential individuals who demand protection against the possibility of such mistakes. But this concession should not be of such a nature as to jeopardize the interests of thousands of the insane in favor of a few persons whose mental status, at the best, may be considered as a doubtful one.

For example, about seven thousand insane persons are admitted to the hospitals for the insane of this State each year. Of this number, probably one tenth of one per cent. are cases in which the mental derangement proves not to be what is technically considered as insanity; as, cases of acute brain disease, alcoholism, etc.; and of these cases of mistaken diagnosis, for years past at least, all have manifested symptoms of a failure of mental integrity, and not a single one has been found to be a victim of malicious persecution or of improper motives.

And so it is of the utmost importance that the members of this society, together with the great body of medical men whose opinions, unfortunately, were not sought by the eminent legislators who were engaged in the revision of the law, should carefully study its

provisions and method of procedure; to the end, on the one hand, that they may make its application as harmonious as possible, and, on the other, that they may exert their influence in procuring the correction of such faults as may be found to exist. And furthermore, if it is found that, with the most judicious management, a strict method of procedure under the present law is likely to prove prejudicial to the interests of the insane, there can be little doubt that the judges will be able and willing so to interpret its provisions as to remove or greatly mitigate any asperities that may be discovered, in case the defects in the law are properly brought to their knowledge.

The character of the law, as a whole, can be most conveniently studied by considering each of its provisions by itself.

The first provision, in logical order regarding the certification of the insane, is the petition. This is a form under which some person is required to take the initial step of requesting that an alleged insane person be placed under legal care; and in this petition the petitioner must state some reason why he thinks the certification should be made. Now this is a step that has always been taken, and that always must be taken in some way. Some person who is interested always does make a request, either to an officer of the State, or more likely to a physician, that the alleged lunatic be examined with reference to his mental condition. He makes this request or petition because he has reasons for making it; and any physician he might consult would certainly ask for and receive a statement of these reasons. The only difference, then, between what was done under the former law, in this respect, and what is required

under the new, is the putitng of the request or petition in legal form, and so making it a matter of record, in like manner as the certificate of the examining physicians is made a matter of record. In the revision of the law the legislators have probably had in mind the precedent furnished by the lunacy laws of England and of Scotland, in accordance with which a petition, made in due legal form, is the first step in the process of certification. Or, they may simply have thought that a request or petition was logically a step that should be made part of the record.

The question now is, whether this placing of the request or petition in legal form and making it part of the record is open to objections; and, if so, what the objections are, and how they may best be obviated.

It is clear that the petition can not increase the responsibility of the physicians. On the contrary, it must diminish their liability to suffer from suits for damages. But it is possible and even probable that, in some cases, the necessity of making a formal petition may deter friends of insane patients from seeking to place them under legal care as soon as they otherwise would do, so that great damage may thus be done to some of the insane by diminishing the probabilities of a cure. Ordinary delays are often prejudicial. Additional delays would serve to increase the danger. It may be said that invalids should not be allowed to suffer through a mere technicality or sentimentality. But things must be taken as they are, rather than as they ought to be.

The petition is liable to be a deterrent in three different ways: First, through an unwillingness to take the formal initiative; in the second place, through lack

of knowledge how to make the petition in proper form; and, in the third place, through an unwillingness to seek the services of a lawyer in a case which seems to the petitioner, at least at this stage, as being purely medical in its nature.

The first of these possible deterrents can not be entirely avoided while the law remains as it is. But its force may be greatly diminished, if not entirely obviated, by showing that the petitioner always has and always must take the initiative; that it is a responsibility that he ought to take; and that the jurat does not really increase his responsibility.

The second and third of these deterrents may be easily and entirely obviated by the medical examiners. When the petitioner calls in the services of the examiners, as he always must do, and when he has stated to them his reasons for seeking their services, they have only to write his statements in the petition in proper form, with a request that he have the jurat added by the most convenient notary. This will add little if at all to the labors of the examiners; for, in any case, they would keep a record of the pertinent statements of the petitioner. But, in addition, the examiners might arrange to have the jurat of the petitioner taken at the same time with their own, either at their office or at some convenient place elsewhere, thus relieving the petitioner of the annoyance even of seeking the services of a notary.

The suggestion has been made by the State Commission in Lunacy that "medical examiners are required to fill out only the certificate." But, while they are required to do this only, the statements above made may serve to show how physicians may remove obstacles

which might seem serious to friends of patients with little trouble to themselves.

The next point for consideration is the personal service. The law directs as follows, to wit: "Notice of such application (or petition) shall be served personally, at least one day before such application, upon the person alleged to be insane," etc. The object of this provision was, undoubtedly, the prevention of the confinement of persons who were not insane, as lunatics, under the hypothesis that hitherto this has been an imminent danger. It may safely be assumed that medical men who are conversant with the subject will agree in the opinion that it was not needed; but the point that now requires especially to be considered is, whether it is likely to be prejudicial; and the answer to this question will depend very much on the interpretation that may be given to the provision, and on the disposition of the judges in regard thereto.

If the personal service regulation is interpreted to mean that a formal legal paper is to be served, informing the mental invalid that an application is about to be made to the court to have him declared a lunatic, and that he is to be placed in legal custody as such, the service of such a paper can be considered little less than an outrage. It would be a sort of citation to answer a legal charge of being a lunatic, and offensive as such. But certain lawyers, at least, have so interpreted the intent of the law. If this is the proper interpretation, medical men who are conversant with the subject can hardly fail to agree in the opinion that judges should, in almost every case, dispense with the personal service, on the ground either that the service would be injurious, or that it would be useless, because the patient

would fail to understand its meaning. The mere pretense of serving such a paper, without the person served having an opportunity or the ability to get a knowledge of its contents, would be worse than an evasion or a subterfuge—it would be a fraud. And it may be asserted with little fear of contradiction that very few lawyers or judges would be willing to serve such a paper on an intimate friend or on a member of their own family. It may be admitted, however, that in very rare cases indeed the service of such a legal paper, or even the formal trial of an alleged lunatic before a judge, may be of advantage to the patient. This would happen especially in incurable cases, which are sometimes classed as paranoiacs. But the same course might have been pursued under the former law.

If, however, personal service is interpreted to mean a verbal statement to the supposed lunatic that, in accordance with the advice of eminent physicians, measures were being taken to have him placed under medical custody and treatment at a specified place, or some equivalent statement, the personal service provision may not only be made harmless, but even advantageous, with the proviso that it be dispensed with in unsuitable cases.

It is probably not well enough understood that in the case of many of the insane a candid statement should be made to them of what is proposed to be done; that under the best medical advice it has been decided to place them in some specified hospital or under some specified care. This course tends to prevent a feeling that they have been unfairly dealt with, or that they have been deceived, and so renders them better satisfied with the care under which they may be placed. Otherwise they are apt to think that some mistake has been

made, that they are unjustly and illegally detained; and so the moral influences that may be brought to bear upon them at the hospital may for a time be rendered nugatory.

But there are reasons in many cases why it is better to delay informing the patient of what is being done until his arrival at the hospital; to which he may often be taken without protest and without any explanation whatever. In the first place, the friends of patients may be so averse to having them informed of what is being done that they would neglect or refuse to seek such care and treatment as may be urgently needed. They may have fears lest the invalid should be excited and so injured by the information, or lest he should make a violent opposition which would be very distressing to other members of the family. And, in fact, these fears would often be realized. But many patients who would strenuously oppose removal to a hospital, if informed of it in advance, quietly accept the situation when they are once there, and are then informed of what is being done for them, as should always be the case when the patient has intelligence enough to appreciate what is being said.

A wise provision is made under the revised lunacy law whereby the judge may, in his discretion, dispense with personal service, by making a formal statement of his reasons therefor.

If, now, personal service be interpreted to mean the placing in the hands of the alleged lunatic of a legal paper informing him of the charge about to be made against him, there is likely to be little difference of opinion among competent alienists that the personal service should be dispensed with in almost all cases.

When personal service, however, whether formal or verbal, is dispensed with, the judge will naturally depend upon the medical examiners for the reasons on which his decision is founded. If a statement of these reasons by the medical examiners in the certificate should be considered satisfactory by the judges, as would seem probable, this method would have the merit of simplicity; and, moreover, the reasons of the medical examiners would constitute a part of the record in the body of the certificate.

Whenever personal service has been made, whether formal or verbal, it would seem that a statement of the fact in the petition should be a sufficient verification for the information of the judge. This procedure, moreover, would have the merit of simplicity, and of constituting a part of the record.

The procedure for the certificate of the medical examiners remains the same under the revised law as under the old, and hence does not require examination.

The order of hearing under the revised law does not differ essentially from the legal measures that might have been and sometimes were instituted, *de lunatico inquirendo*, under the old law, and so does not require consideration.

In regard to the functions of the judge, the revised law differs from the old in this, that now "the judge to whom such application is made may, if no demand is made for a hearing in behalf of the alleged insane person, proceed forthwith to determine the question of insanity, and if satisfied that the alleged insane person is insane, may immediately issue an order for the commitment of such person to an institution for the custody and treatment of the insane"; while the old law directed

that "no person shall be committed to or confined as a patient in any asylum . . . except upon the certificate of two physicians, under oath, setting forth the insanity of such person"; and that "such certificate be approved by a judge or justice of a court of record." The discussion of the five-day clause is deferred until later on.

Now, whether the functions of the judge, under the revised law, are likely to increase the difficulties and cause harmful delays to be experienced in the process of placing mental invalids under needed care and treatment will depend in part on the interpretation given to the law, and in part on whether the judges are disposed to view the welfare of thousands of insane patients as of paramount importance, or whether they believe it to be the most important part of their duty to prevent the possible mistake of having a person who is technically sane adjudged a lunatic; an event which is liable to happen under any possible method of procedure; for it will readily be understood that such mistakes could only be made in cases in which the person had acted more or less like a lunatic. And it is proper to state in this connection that none of the commissioners in lunacy of this State have ever found a case in which a sane person was declared a lunatic through improper motives.

The distinguishing point of difference between the wording of the new law and the old regarding the functions of the judge is that under the former he "may proceed forthwith to determine the question of insanity, and if satisfied that the alleged insane person is insane may immediately issue an order for the commitment of such person," while under the old law the

judge approved the findings of the medical examiners; and this approval constituted the authorization for placing the insane person in hospital care.

It was certainly the intent of the old law that the judge should be satisfied of the insanity of the alleged lunatic. It was to this end that the evidences of insanity were written out in the medical certificate; and it was to this end that certain physicians were qualified as medical examiners, thus indorsing them as witnesses upon whose testimony and opinions the judges might rely. And this approval of the judge certainly had the effect of an orderly commitment. But it was not intended that the functions of the judge should of necessity be a trial of the case, although he had the power to "institute inquiry and take proofs as to any alleged lunacy before approving or disapproving of such certificate." And he might, "in his discretion, call a jury in each case to determine the question of lunacy." So far as appears, then, from the wording of the law, there is no substantial difference between the old and the new, in regard to the functions of the judges. And so it is quite within the sphere of their duty to make the procedure in lunacy cases quite as prompt and as little obstructive under the new law as it was under the old. Nor is there any sufficient reason to believe that the increase of formalities under the new law will induce judges to place obstructions where none, of necessity, exist; and especially when it is brought to their notice that obstructive delays are sure to be injurious.

If, then, the procedure for the commitment of insane persons to hospital or other care, under the revised lunacy law, can be put in practice in some such simple way as has been suggested, to wit, by the examining

physicians undertaking the management of whatever pertains to the petition by including in the petition the statement that personal service has been made, if this has been the case; or by including in the medical certificate a statement of the reasons why personal service is considered unadvisable, if this is the case; and with the wise concurrence of the judges in avoiding such formal obstructions as are required neither by the terms of the law nor by the nature of the particular case in question; there seems to be no reason why the procedure need be obstructive in its character, in so far as the actual provisions of the law are concerned.

But a provision of the old law which was very important in character has been omitted in the new—the five-day clause, under which a person who had been found by legal medical examiners to be deranged in mind might be placed and detained in a hospital for the insane for the term of five days before securing the approval of a judge. This provision was included in the law of 1874 at the suggestion of the Medical Superintendent of the New York City Hospital for the Insane, with the explanation that patients were sometimes received at the hospital in such a state of physical exhaustion that recovery was hopeless, but some of whom, at least, might have been expected to recover if they could have received proper care a little sooner. In some of these cases the attack had been sudden and severe, or had supervened during an attack of some other exhaustive disease; or, in other cases, friends had delayed placing them under proper treatment until exhaustion was imminent. The time required to find a judge and for legal formalities was sufficient to decide the question between recovery or death. And at that

time the legal formalities were few. The necessity for some such provision was still greater in the country, where both hospitals and judges were often difficult of access. It was found also that this provision, which was intended for emergencies only, was of great use under less serious circumstances; as when the insane person was dangerously violent, or suicidal, or so noisy as greatly to disturb the neighborhood; or when he had no home or no friends to undertake his care. The five-day clause simply provided for legal, humane detention in a hospital, where proper treatment as well as care could be furnished; instead of detention without the authority of law at home, in a hotel, in a police station, or in some other place unsuited to the requirements of the case.

It should be stated, however, in this connection, that the five-day clause of the former lunacy law, which was intended by its originators for cases of emergency only, was not so understood by many physicians. They understood and made use of it as subserving purposes of mere convenience. Indeed, the practitioners of a neighboring city perverted its intent by uniformly neglecting to secure the approval of a judge at all, leaving it for the physician in whose care the patient had been placed to secure such approval. In the re-enactment of the emergency clause, then, it should be clearly stated that it is a provision for cases of emergency. The examining physicians should be required to state in the emergency certificate what the emergency is; and a copy of this certificate should be submitted to the judge when he is called upon to act in the case.

A little more than a year ago, when certain lawyers were urging the enactment of laws which should pre-

vent the kidnapping of sane persons and confining them as lunatics, or, at least, the prevention of mistakes in diagnosis, and who among other measures of prevention were urging the abrogation of the emergency clause, a circular letter was written to the medical superintendents of the hospitals for the insane of this State making inquiry whether they considered this provision as a useful one. Ten replies were received, and all of these replies were in the affirmative, and to the effect that the emergency clause should be retained as a part of the lunacy law. When physicians in general practice express this opinion, as they generally if not uniformly do, it may be alleged that they are interested in having the power to rid themselves of a particularly trying patient. But it can not be maintained by the most censorious that hospital superintendents are influenced by any such motives. The motives which impelled them to this opinion were evidently unselfish and humanely in the interest of the patients who came under their care; for the reception of patients under the emergency clause was a source of anxiety, lest the examiners should fail to secure the required approval in due time.

But the view that the emergency clause is a useful one is not confined to the physicians and the medical superintendents in the State of New York. This provision has been included in the lunacy law of England, enacted in 1890, and also in the lunacy law of Scotland. The English law is, in part, as follows, to wit: "In cases of emergency where it is expedient, either for the welfare of the person (not a pauper) alleged to be a lunatic, or for the public safety, that the alleged lunatic should be placed forthwith under care and treat-

ment, he may be received and detained at an institution for lunatics, or as a single patient, upon an urgency order, made (if possible) by the husband or wife or by a relative of the alleged lunatic, accompanied by one medical certificate." Also, "an urgency order shall remain in force for seven days from its date."

The Scotch emergency provision is similar in character, but allows detention for three days only, without the usual legal order.

Inasmuch as the practice in this State for more than twenty years, the unanimous opinion of general practitioners, of examiners in lunacy, of State commissioners in lunacy, and of superintendents of hospitals for the insane of this State, and the practice both in England and in Scotland are in favor of a law authorizing the detention of alleged lunatics, in emergencies, for a certain period of time, it is incumbent on those physicians who are especially interested in the welfare of the insane to unite in urging upon the Legislature the re-enactment of the emergency clause of the lunacy law, with such modifications as may serve to prevent its abuse and give it definiteness of form.

And then, if the expectation is well founded that the judges of the State of New York will be disposed so to interpret the provisions of the revised lunacy law that the mode of procedure shall be as fully in the interest of those unfortunate persons who are to become the wards of the State as was the mode of procedure under the former law, there can be little doubt that physicians will be able and willing so to act, direct, and manage as to protect their patients from harm and relieve the friends of their patients from undue anxiety and annoyance.

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